

APPENDIX C

JOINT LABOR-MANAGEMENT GRIEVANCE ARBITRATION SERVICES CONTRACT (FMCS Appointed Arbitrator)

General Terms

1. **Date:**
2. **Case #/Style:**
3. **Case Type:**
4. **Agency Unit:**
5. **Hearing Site:**
6. **Tentative Hearing Date:**
7. **Arbitrator's Name/FMCS #/Mailing Address:**
8. **Agency's Name:** MTMC Deployment Support Command
9. **Agency Contracting Officer's Name/Mailing Address:**
10. **Agency Contracting Officer Representative's Name/Mailing Address:**
11. **Union's Name:** AFGE Local 2855
12. **Union Representative's Name/Mailing Address:**
13. **Stipulated Per Diem Arbitration Fee Amount (\$):**

Additional Terms

14. Consent to Appointment Agency and Union (hereafter sometimes referred to jointly as the "parties") consent to the

appointment of the Arbitrator by the Federal Mediation and Conciliation Service (FMCS) to arbitrate the case.

15. Services to be provided Arbitrator will perform the following grievance arbitration services in the time and manner prescribed by the collective bargaining agreement (CBA) and this contract:

- a. Review and consider (i) the official grievance file, (ii) all relevant and material documents, demonstrative evidence and witness testimony admitted as evidence in the case, (iii) all relevant statutes, regulations, policies or collective bargaining agreements cited by the parties and (iv) pre-hearing and post-hearing briefs or other oral or written arguments of the parties concerning the case;
- b. Conduct all necessary hearings or other proceedings; and
- c. Issue a written opinion and award in the prescribed time and manner.

16. Selection of Hearing Date Promptly following appointment by FMCS, the Agency and the Union will jointly request the Arbitrator to propose to several hearing dates within the next 60-day period, in which he will be available to arbitrate the case. The Agency and the Union will decide which of the proposed dates are agreeable. The Agency will report back to Arbitrator those proposed dates available to the parties. The Arbitrator will select a date available to all. Agency's representative will promptly notify Union of the date selected by Arbitrator for the on-site hearing.

17. Pre-hearing Matters The Arbitrator may meet, hold telephone conferences or otherwise confer jointly with the parties and parties' representatives in advance of the hearing on the merits to consider:

- a. Resolution of pending threshold issues, procedural matters, and objections;
- b. The necessity or desirability of pre-hearing briefs or written statements of the parties' contentions;

- c. Identification of contested issues of fact and simplification of the issues;
- d. Possibilities for obtaining stipulations of fact;
- e. Need for additional discovery or release of information to or by either party;
- f. Exchange of lists of witnesses expected to testify at the hearing;
- g. Marking and exchanging exhibits to be introduced at the hearing and stipulation as to the authenticity and admissibility of those exhibits;
- h. A schedule of deadlines in which to accomplish all pre-hearing matters;
- i. Resolving the case by another alternative dispute resolution (ADR) method;
- j. Settlement of the case; and
- k. Other matters likely to facilitate final disposition of the case.

18. Conduct of Hearings The arbitration hearing will be conducted as follows:

- a. All persons testifying at the hearing will be placed under oath administered by The Arbitrator;
- b. The Arbitrator may establish reasonable ground rules to insure orderly, thorough and fair proceedings;
- c. The parties representative will be permitted to make opening and closing statements and (subject to relevancy) may introduce documentary or demonstrative evidence, examine and cross-examine witnesses and make proper objections to any aspect of the proceedings. The Arbitrator's rulings on objections are interlocutory and may not be appealed in advance of the arbitration award;

d. Formal rules of evidence will not apply. Evidentiary rulings will be made with a view towards insuring a thorough and fair hearing. Hearsay evidence is admissible and will be given whatever weight the Arbitrator decides, if any. The Arbitrator's rulings on evidentiary matters are interlocutory and may not be appealed in advance of the arbitration award;

e. Unless otherwise agreed by the parties, hearings will be held between 9:00 a.m. and 4:00 p.m., Monday through Thursday. The Arbitrator, however, in order to conclude a hearing, may continue proceedings after regular working hours, for a reasonable period, and from day to day, as necessary.

f. At the Arbitrator's discretion, in order to insure a thorough and fair hearing, and subject to advance coordination with and authorization of agency authorities, the hearing may be temporarily adjourned to permit the Arbitrator, the parties and parties' representatives to view agency facilities, equipment, locales, and operations or demonstrations that are relevant and material to the case;

g. At the request of either party, the witnesses on both sides will be placed under "the rule", i.e., sworn in by Arbitrator and then removed from the hearing room to some place where they cannot hear the testimony being delivered by other witnesses, until such time as they are called individually to testify. The rule does not apply to an employee grievant, agency or union representatives for the case, or the parties' hearing representatives; and

h. Hearings will be orally recorded by Agency and a copy provided to Arbitrator and the parties. No written transcript of the proceedings will be ordered or required. Unless otherwise agreed by Arbitrator and the parties, video recording of proceedings is prohibited.

19. Post-hearing Matters

a. Re-opening Unless otherwise agreed by the parties, the record of the hearing will be closed at the conclusion of the hearing or upon submission of a stipulated record to the Arbitrator for decision without a hearing. Once the record is closed, the Arbitrator may order the record re-opened for good cause only, for a limited and specific purpose, anytime within 14 calendar days after the original closing date. Once the record is closed, the parties may not submit any additional evidence in support of their position without the express consent of the Arbitrator, which will not be given without reasonable notice and an opportunity for either party to object.

b. Post-hearing Briefs The parties may file post-hearing briefs after the record is closed. The Arbitrator may specify particular issues or points he wishes the parties to address in their briefs and will establish a submission deadline and a method or procedure to be utilized in exchanging/serving briefs. Post-hearing briefs will not incorporate or argue evidence, issues or points not introduced or raised during the hearing.

20. Opinion and Award

a. Unless otherwise agreed by the parties, the Arbitrator will issue an opinion and award in the case within the time specified in the bargaining unit agreement or 60 calendar days after the record is closed (whichever is sooner). The Arbitrator's opinion and award will be in writing, dated as of the date of issuance and signed.

b. The opinion and award will be consistent in all respects with the terms of the bargaining unit agreement, the parties' agreements concerning the case, this contract and the evidence comprising the record of the case. The Arbitrator may not modify the terms of the parties' agreements in any manner. The award will be reasonably clear and precise to enable the parties to understand and implement the relief being granted (or denied).

c. The opinion and award will explain the factual and legal analysis that underlies the award and will specifically

discuss each of the issues of the case and how each was resolved. In addition, the opinion and award will expressly state any relief requested by either party that is not specifically granted in the award is denied.

d. The Arbitrator's opinion and award will be served on the parties contemporaneously.

21. Decision on the Record

a. The parties may jointly request Arbitrator to render an opinion and award with respect to any dispositive procedural issue concerning the case (e.g., case procedurally non-arbitrable) or the merits, on the basis of a stipulated record, without the necessity for an on-site evidentiary hearing.

b. After reviewing the stipulated record of the case, if Arbitrator concludes that deficiencies in the record preclude him from making a decision dispositive of the matters in controversy, Arbitrator will so notify the parties, who may cure the evidentiary deficiencies by stipulation or other agreed method. Alternatively, either party may withdraw the request for decision on the record (in which case Arbitrator will promptly schedule an on-site evidentiary hearing).

22. Cancellation

a. The party invoking arbitration may withdraw the case and cancel the scheduled hearing, without penalty, upon 10 calendar days (or more) advance written notice to the opposing party and the Arbitrator.

b. The parties may settle the case and cancel the scheduled hearing, without penalty, upon 10 calendar days (or more) advance written notice to the Arbitrator.

c. Should the party who invoked arbitration in the case, for whatever reason, withdraw the case from arbitration and cancel the scheduled hearing date, without giving the minimum 10 calendar days advance written notice, and the parties and the Arbitrator are unable to agree on scheduling another case on that date, the party withdrawing the case

will be solely liable for the cancellation penalty charged by Arbitrator, if any.

d. If the parties settle, resulting in cancellation of the scheduled hearing, without giving Arbitrator the minimum 10 calendar days advance written notice, the parties will each be liable for one half (1/2) the cancellation penalty charged by the Arbitrator, if any.

e. Any cancellation penalty charged by the Arbitrator will not exceed the stipulated per diem arbitration fee amount.

23. Ex-Parte Communications The parties and parties' representatives will not communicate with the Arbitrator, orally or in writing, concerning any substantive matter involving the case, outside of scheduled hearings or telephone conferences, without informing the opposing party or party's representative. The parties' representatives, however, may communicate with the Arbitrator, as necessary, without informing the opposing party or party's representative, to arrange the logistics of the arbitration or for other purely administrative matters.

24. Service of Documents

a. Following invocation of arbitration in the case, copies of every pleading, motion, request, brief, paper or other document required or permitted by the parties' agreements or by the Arbitrator, that are filed with the Arbitrator, will be served upon the parties' hearing representative, at his designated address. All papers or documents filed with the Arbitrator will include a certificate of service, which will constitute prima facie evidence of proper service on the opposing party.

b. Service may be accomplished by personal delivery, fax or mail. Service by mail is complete upon mailing. If service is accomplished by mail, three (3) calendar days will be added to any specified deadline.

25. Authority Terminates The Arbitrator's jurisdiction and authority over the case terminates upon issuance of the opinion and award; except that, within 10 days after issuance, the parties may jointly

request Arbitrator to issue a supplemental opinion and award clarifying specific issues or points of the original opinion and award. Arbitrator may (but is not required to) issue such clarification within 10 days after receipt of the parties' joint request, at no additional expense to the parties.

26. Arbitrator's Fee and Expenses

a. Maximum Per Diem Arbitration Fee Amount The maximum per diem arbitration fee amount for performing arbitration services under this contract, shall be the per diem fee amount specified in the Arbitrator's biographical sketch required by FMCS regulations.

b. Payment Arbitrator's per diem arbitration fee will be paid as follows:

1. One (1) day for hearing preparations;
2. One (1) additional day for travel, if traveling more than 150 miles one way;
3. One day for the initial on-site hearing and one (1) day thereafter for each on-site hearing lasting 6 hours or more;
4. Maximum two (2) days for research, study and drafting the opinion and award;
5. Maximum three (3) days for preparation, research, study and drafting the opinion and award in connection with a decision on the record; and
6. Upon request of the Arbitrator, one or more additional days for preparation, research and study in connection with a complex or otherwise extraordinary case, to be negotiated by Arbitrator and the parties' representatives after the record of the case has been closed.

c. Administrative Charge The Arbitrator may charge an additional reasonable administrative charge for any

extraordinary time or expense incurred in connection with pre-hearing or post-hearing administration of the case. Unless otherwise agreed by the parties, the amount of such charge will not exceed the stipulated per diem arbitration fee amount.

d. Billing

1. Shared Costs The parties will share the cost of the arbitration. The arbitrator's invoice or statement will contain a detailed itemization of all fees, expenses or other charges.

2. Payment Due Payment of the Arbitrator's invoice or statement is due upon receipt of the Arbitrator's opinion and award in the case.

3. Adjustment in Amount Due In the event of any agreed adjustment in the original invoice or statement amount, the Arbitrator will furnish each party a duplicate revised invoice or statement reflecting the adjustment and all credits, if any.

e. Travel and Transportation Expenses

1. General In addition to amounts paid to the Arbitrator for performing arbitration services; the parties will share the Arbitrator's travel and transportation expenses incurred incident to arbitration of the case, if any.

2. Travel Per Diem Travel per diem for Arbitrator's meals and lodging will be the amounts allowed by the Joint Travel Regulations.

27. Miscellaneous Provisions

a. Binding Effect This contract inures to the benefit of and shall be binding upon the parties, their heirs, personal representatives, officers, agents, employees, successors and assigns.

b. Incorporation of Additional Contract Clauses This contract is subject to certain provisions of the Federal Acquisition Regulation (FAR) incorporated by reference.

c. Agency Contracting Officer Representative The authority and scope of the duties and responsibilities of Agency Contracting Officer Representative (COR), are limited to those specified in Attachment B and are incorporated by reference.

d. Entire Agreement This contract contains the entire agreement between the parties and Arbitrator concerning the subject matter and can only be changed by an amendment in writing, signed by the Arbitrator, Agency Contracting Officer and Union Representative, or their authorized agents.

e. Applicable Law All matters related to the validity, construction, interpretation, performance and enforcement of this contract shall be determined in accordance with applicable federal laws and regulations and the CBA.

f. Confidentiality The official grievance file, all documentary and demonstrative evidence offered by the parties (whether or not admitted into evidence), audio recordings of proceedings, correspondence, memoranda, pleadings, briefs, and all other data compilations of any description concerning the case, as well as the opinion and award in the case, are strictly confidential and shall not be revealed or otherwise made available by Arbitrator to any person, firm or organization, other than the parties or parties' representatives or the Federal Labor Relations Authority without the express written approval of the parties. All materials concerning the case in Arbitrator's possession, care, custody or control, are the property of the parties and, upon request, will be returned to the parties following issuance of the opinion and award in the case.

g. Construction To the extent practicable, article 35 of the CBA and this contract are to be construed and interpreted so as to give full force and effect to the parties' intent. In the

event any provision of this contract conflicts with article 35 of the CBA and cannot be otherwise reconciled this contract will govern.

h. Copies Following execution of this contract by the signatories, Arbitrator and the parties will be provided true

copies of this contract, all of which are deemed originals for all contract administration purposes.

ARBITRATOR

AGENCY

UNION
